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KISER *v.* COLONIAL COAL & COKE CO.

Sept. 11, 1913.

[79 S. E. 348.]

1. Electricity (§ 15*)—Liability for Injuries to Licensees and Trespassers.—Parallel with a wagon road was the track of a motor road, across which was a path used by those in the vicinity in crossing the track. An electric light wire was strung along the motor poles, and had broken at a point five feet from the path. In disobedience to the positive orders of her parents not to go on the track, a child three years old went on the track, took hold of the wire, and brought it in contact with the rail, causing a flash, which set fire to her clothes. Held, that the company owning the track and wire was not liable for her injuries and death, since she was a trespasser, or at most a bare licensee, to whom the company owed no duty of having the place of the accident in safe condition, and, moreover, the bringing of the wire in contact with the rail was a result which could hardly have been foreseen.

[Ed. Note.—For other cases, see Electricity, Cent. Dig. § 8; Dec. Dig. § 15.* 5 Va.-W. Va. Enc. Dig. 55; 14 Va.-W. Va. Enc. Dig. 377; 15 Va.-W. Va. Enc. Dig. 327.]

2. Negligence (§ 33*)—Care Required as to Trespassers.—An owner of premises owes to a trespasser the duty only of doing him no intentional or willful injury, and before any duty of protection arises there must be such notice of his danger as would put a prudent man on the alert.

[Ed. Note.—For other cases, see Negligence, Cent. Dig. §§ 45-57; Dec. Dig. § 33.* 10 Va.-W. Va. Enc. Dig. 365; 74 Va.-W. Va. Enc. Dig. 765.]

3. Negligence (§ 32*)—Care Required as to "Licensee."—A "licensee," or one who is permitted by the passive acquiescence of the owner to come on his premises for his own convenience, takes upon himself all the ordinary risks attached to the place and the business carried on there, and while the owner must not intentionally or willfully injure him, he owes him the active duty of protection only after he knows of his danger, or might have known it and avoided it by the use of ordinary care.

[Ed. Note.—For other cases, see Negligence, Cent. Dig. §§ 42-44; Dec. Dig. § 32.* 10 Va.-W. Va. Enc. Dig. 367; 14 Va.-W. Va. Enc. Dig. 766.

For other definitions, see Words and Phrases, vol. 5, p. 4143; vol. 8, p. 7706.]

Error to Circuit Court, Wise County.

Action by J. B. Kiser, administrator of May Lunsford, against

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

the Colonial Coal & Coke Company. Judgment for defendant, and plaintiff brings error. Affirmed.

Bond & Bruce, of Wise, for plaintiff in error.
Bullitt & Chalkley, of Big Stone Gap, for defendant in error.

PHIPPS *v.* WISE HOTEL CO. et al.

Sept. 11, 1913.

[79 S. E. 349.]

1. Equity (§ 452*)—Bill of Review—Defenses—Negligence.—A suit to enforce a mechanics' lien on land subject to certain vendors' liens, the holders of which were made parties, was referred to a master commissioner to ascertain and report the liens, their amounts and priorities, and the value of the lots, exclusive of the building, and of the building. The commissioner reported the value of the lots at $4,500, and of the building at $13,000, and that the vendors' liens were first liens on the lots, and the mechanic's lien a first lien against the building. The report without exception on the part of D., one of the holders of the vendors' liens, so far as the mechanics' lien was concerned, was confirmed, and a decree entered, directing a sale, and ordering that the proceeds should be distributed, 26/37 to the holder of the mechanic's lien, and to the holders of the vendors' liens the residue. The holder of the mechanic's lien by bidding caused the property to sell for enough to protect his lien. On notice to D. the sale was confirmed, and the proceeds thereof distributed as decreed. The purchaser thereafter made improvements on the property, and paid insurance thereon. D. filed a bill of review on the ground that the vendors' liens should have been given priority over the mechanic's lien. Held, that D., having neglected to make defense to the commissioner's report upon the question of law raised by the bill of review, was estopped and not entitled to the relief sought, since he had put it beyond the power of the court to correct its decree establishing the liens, without loss to some one of the interested parties, and the loss should be borne by the one whose negligence or conduct caused it.

[Ed. Note.—For other cases, see Equity, Cent. Dig. §§ 1101-1109; Dec. Dig. § 452.* 9 Va.-W. Va. Enc. Dig. 94; 14 Va.-W. Va. Enc. Dig. 633; 15 Va.-W. Va. Enc. Dig. 596.]

2. Equity (§ 442*)—Bill of Review—Grounds—Establishment.—A bill of review will not lie, unless the facts upon which it is based are recited in the decree sought to be reviewed, as admitted in the pleadings.

[Ed. Note.—For other cases, see Equity, Cent. Dig. §§ 1065-1070;

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*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.